

CITY OF HELENA
REGULAR CITY COMMISSION MEETING
March 25, 2002
6:00 P.M.

Time & Place A regular City Commission meeting was held on Monday, March 25, 2002, at 6:00 p.m., in the Commission Chambers, 316 N. Park Avenue, Helena, Montana.

Members Present Mayor Smith indicated for the record that Commissioners Netschert, Oitzinger, Parriman and Pouliot were present. City Manager Tim Burton, City Attorney David Nielsen and City Clerk Debbie Havens were present. Barb Morris of the Helena Citizens Council was also present.

Pledge of Allegiance Mayor Smith lead those persons present in the pledge of allegiance.

Mayor Smith noted for the record that members of the Helena Civic Television were present and would be filming the meeting. It is anticipated to have the commission meetings aired live sometime this spring.

Minutes The minutes of the regular city commission meeting of March 11, 2002 were approved as submitted.

Proclamation PROCLAMATION
A. Charter Celebration Day

Mayor Smith read the "Charter Celebration Day" proclamation and then presented Reverend George Harper with a certificate of recognition for serving as a member of the Local Government Study Commission that drafted the Helena City Charter in 1977.

Reverend Harper thanked the commission for recognizing the importance of the charter.

Commissioner Pouliot noted that Mr. Warren Brass was unable to attend the meeting but wanted to thank the commission for recognizing such an important document. Commissioner Pouliot accepted Mr. Brass's certificate.

Consent Agenda CONSENT AGENDA
A. Claims

City Manager Burton recommended approval of the claims.

Motion **Commissioner Netschert moved approval of the consent agenda, item A.** Commissioner Parriman seconded the motion. All voted aye, motion carried.

Communications COMMUNICATIONS/PROPOSALS FROM COMMISSIONERS

Mayor Smith thanked Commissioner Netschert for standing in for him during his absence. Mayor Smith also noted that he was unable to attend the Habitat for Humanity dinner and asked for an update. Commissioner Parriman reported that he and Commissioners Netschert and Oitzinger were celebrity waiters at the dinner and it was a great evening.

Commissioner Pouliot reported that he and Commissioners Parriman and Oitzinger attended a fundraiser for Bikes for Tykes at the Helena Bighorn Hockey Game.

Commissioner Netschert shared that he was in Couer d'Alene, Idaho over the past weekend and had the opportunity to visit a community playground for kids of all ages. He will be receiving additional information on the playground and the funding sources. Mayor Smith encouraged Commissioner Netschert to share the information with Parks and Recreation Director Randy Lilje.

Commissioner Oitzinger noted the unicyclers at the hockey game donated their time for the Bikes to Tykes fundraiser.

Report of the City Attorney

REPORT OF THE CITY ATTORNEY

City Attorney David Nielsen had no items to report on.

Report of the City Manager

REPORT OF THE CITY MANAGER

City Manager Tim Burton invited John Rundquist up to give an report on his recent trip to Kazakhstan.

Public Works Director John Rundquist gave an overview of his recent trip and of the meetings they had with various government officials. Mr. Rundquist presented Mayor Smith with a certificate from the Akem.

Mayor Smith thanked Mr. Rundquist for the certificate and spoke on the importance of the relationship between the City of Helena and Pavlador. He offered his assistance with the next exchange.

City Manager Burton noted a more in-depth report would be given at an administrative meeting.

Tatem House Lot

CONSIDER THE SALE OF THE TATEM HOUSE PARKING LOT PROPERTY WITH REIMBURSEMENT TO THE PARKS ACQUISITION/IMPROVEMENT FUND AND THE PLANNING DIVISION FOR RELATED EXPENSES.

Staff Report

Director of Parks and Recreation Randy Lilje reported the subject property was declared surplus in October 2000. A short time later the zoning was changed to R-1. Since that time, a new certificate of survey and deed have been developed to accurately reflect the properties since the construction of Reeders Village Drive.

The sale of this property has been duly advertised, and parties expressing interest in the properties were notified. Bids were due at 5:00 p.m., Tuesday, February 19, 2002.

Although there was a considerable interest in the property, only one bid was received, that being from Joe Hrella and David Brown, for the purchase price of \$45,000. The minimum price of \$42,700 was placed on the property. Mr. Lilje recommended acceptance of the bid from Mr. Hrella and Mr. Brown.

The following expenses were associated with the sale of the property: \$410 for a zone change; \$37 for advertising; \$2985.40 for surveying; \$67 for recording the deed, and \$319 for title insurance. All expenses except the zone change were paid out of the parks acquisition/improvement fund. This fund should be reimbursed. Likewise, the Planning Department should be reimbursed for the zone change fee.

Discussion

Mayor Smith asked if Joe Hrella and David Brown were a corporation? Mr. Lilje stated Mr. Hrella and David Brown are partners in a corporation. They own Hair Hair Design and the condo adjacent to it. They plan to build a condo on

the Tatem House property.

Motion **Commissioner Pouliot moved approval of the sale of the Tatem House parking lot property to Joe Hrella and David Brown in the amount of \$45,000 and to approve the reimbursement to the respective funds for the expenses involved with the sale of the property.** Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Personnel Policy Revision CONSIDER A RESOLUTION AMENDING CITY OF HELENA PERSONNEL POLICIES - SECTIONS 70-3 "TIME REPORTING" AND 80-2 "OVERTIME/COMPENSATORY TIME."

Staff Report Human Resources Director Harry "Salty" Payne reported there are currently employees maxing out on exempt compensatory time and are being penalized under the current system if they earn and use comp time during the same pay period. He recommended amending Section 80-2 to eliminate the exempt employees from being penalized. Mr. Payne handed out an example of how the amendment would work in regards to compensatory time.
The amendment to Section 70-3 would allow new electronic remote reporting of payroll, reducing the workload of the payroll technician.
Mr. Payne recommended approval of the resolution adopting revisions to the City of Helena Personnel Policies Handbook.

Motion **Commissioner Oitzinger moved approval of a resolution amending the City of Helena Personnel Policies, Sections 70-3, Time Reporting and 80-2 Overtime/Compensatory Time.** Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Resolution 11740**

Subcommittee CONSIDER RATIFYING A SUBCOMMITTEE OF TWO COMMISSIONERS FOR THE PURPOSE OF CONDUCTING A PUBLIC HEARING ON A TAX ABATEMENT APPLICATION.

Staff Report City Attorney David Nielsen reported Friendly's Sinclair, located at 1831 11th Avenue, has submitted a tax abatement application for remodeling and expansion of an existing business in accordance with §15-24-1502, MCA. Consideration of tax abatement applications is done through the public hearing process. Section 7-1-4131, MCA, provides that if the public hearing is not held before the ultimate decision makers, the City Commission in this case, a summary or transcript of the public hearing shall be provided to the ultimate decision makers prior to their determination on the issue. That code section also provides that the governing body may designate a subcommittee or hearing examiner to conduct public hearings. It was discovered that a quorum of City Commissioners would not be able to attend the public hearing on the tax abatement application, but there was not time for the commission to appoint a subcommittee to conduct the public hearing. Mr. Nielsen noted that County Commissioner Murray chaired the joint work session and conducted one joint public hearing.
City Attorney Nielsen recommended the commission ratify a subcommittee of two city commissioners and County Commissioner Mike Murray for the purpose of conducting a public hearing on a tax abatement application.

Motion

Commissioner Netschert moved to ratify a subcommittee of two city commissioners and County Commissioner Mike Murray for the purpose of conducting a public hearing on a tax abatement application. Commissioner Oitzinger seconded the motion. All voted aye, motion carried.

Tax Abatement

CONSIDER A RESOLUTION FOR A TAX ABATEMENT APPLICATION FOR THE REMODELING AND EXPANSION OF AN EXISTING COMMERCIAL BUSINESS, LOCATED AT 1831 11TH AVENUE, HELENA, KNOWN AS FRIENDLY'S SINCLAIR, IN ACCORDANCE WITH 15-24-1502, MCA.

Staff Report

Project Manager Hal Fossum reported on January 28, 2002, Ronald and Barbara Leland, owners of Friendly's Sinclair located at 1831 Eleventh Avenue, applied for tax abatement under provisions of state laws for remodeling, reconstruction, or expansion of existing buildings or structures (MCA 15-24-1501 *et seq*).

Under these provisions of state law, applicants must remodel, reconstruct, or expand buildings or structures so as to increase the property's taxable value by at least 2.5 percent. If approved, the incremental taxable value is phased in over five years at 20 percent each year. Upon local approval of tax abatements, the Department of Revenue determines eligible improvements and applies the abatement to the property.

The Lelands are just completing an extensive reconstruction and remodel of the Friendly's Sinclair site. The applicants describe the work with the following statement: "This is a total rebuild. We have removed the old gas tanks, pumps, canopy, storage shed and convenience store building. We are installing three new tanks, new pumps, new canopy, and a 5100 square foot store and food court. The lot will be paved and will completely improve the east half of the 1800 block of 11th Avenue." Final inspection of the site by the City of Helena Building Division is pending. Due to the expansion, the establishment has expanded from 5 to 17 employees. The value of the renovation is estimated at \$336,000.

Staff estimates the total value of the proposed tax abatement at \$11,603 over the five-year life of the abatement.

Under city and county policy, the commissions may consider granting abatement for the property if the following criteria are satisfied.

1. The project must cost a minimum of \$100,000 as evidenced by a building permit.

Building permits on file with the City of Helena estimate the value of new construction at \$336,000.

2. The remodeling, reconstruction, or expansion must result in at least 2.5 percent increase in taxable value.

Department of Revenue records indicate a 1997 assessed value of the property of \$213,200. The renovation of the property is determined by Revenue appraisers, but it is certain that the new investment of \$336,000 will result in an increase in taxable value of more than 2.5 percent.

3. The property must be commercial, nonresidential in nature.

Staff inspection of the property verified that its use is non-residential. The operation is a gas station, convenience store, and deli.

4. The project must comply with all covenants and zoning requirements.

The City Chief Building Official indicates that the property owners are in compliance with all covenants and zoning requirements. Certain issues are still pending, including determination of the number and location of curb cuts,

completion of required landscaping, required changes to lighting, and final inspection. All these matters are ordinary details at this phase of project completion.

5. The owners must be current on all property taxes.

Records of the County Clerk and Recorder indicate that property taxes are paid and current.

6. The property must be considered for tax abatement under the Historic Preservation program.

Staff have verified that the property is not eligible for abatement under provisions for Historic Preservation.

7. The applicant must have satisfactorily completed the state form AB-56.

The property owners have completed the form.

Public hearing.

The required public hearing was duly held at the March 13, 2002 Joint Work Session.

All due process requirements have been satisfied. Staff recommended that any motion for the abatement include a statement to the effect that approval is contingent upon passage of the same by the county commission.

Granting the proposed abatement could be seen as consistent with the 2001 Helena Growth Policy, which includes a policy (#1 on page 2-13) directing the city to implement incentives and procedures to retain and encourage a high standard of visual appearance, and is consistent with the city's initiative to improve the attractiveness of Helena's entryway corridors. The proposal may also be seen as compatible with goals in the 2000 Lewis and Clark County Comprehensive Plan (Growth Policy), including: (a) promoting the retention, diversification and expansion of existing business, and (b) providing adequate opportunities for commercial growth and development in Lewis and Clark County. The proposal could also be seen as consistent with economic development goals based on the economic impacts of the new construction and expanded employment enabled by this extensive remodeling project.

Granting the proposed abatement would decrease revenues to the city, county and school district.

Mr. Fossum noted the County Commission approved the tax abatement at their March 21, 2002 meeting.

Motion

Commissioner Netschert moved approval of a resolution approving the tax abatement application of Ronald and Barbara Leland for property located at 1831 Eleventh Avenue in the City of Helena, Montana.

Commissioner Pouliot seconded the motion. All voted aye, motion carried.

Resolution 11741

**Water Use
Reduction Staging
Plan**

CONSIDER FIRST PASSAGE OF AN ORDINANCE AMENDING HELENA CITY CODE CHAPTER 6-4 AND ENACTING A WATER USE REDUCTION STAGING PLAN IN THE EVENT OF WATER SHORTAGE DUE TO DROUGHT OR EMERGENCY.

Staff Report

Public Works Director John Rundquist reported the Water Conservation Citizens Advisory Committee was created for the purpose of developing standardized water conservation procedures and educational materials. The commission established this committee following the severe drought of 2000 that stretched the city's ability to provide adequate water supply. Although water conservation efforts at that time were successful, the commission suggested that

a conservation plan was needed for consistent implementation of water conservation strategies and public information.

To that end, the advisory committee drafted a Water Use Reduction Staging Plan. This plan will institute increasing voluntary and mandatory water conservation measures with increasing drought or state of emergency. With the voluntary and mandatory measures is a proposed public information program that includes regular water supply status reports on television and in the newspaper, public service announcements, paid advertisements and direct contact with larger users.

The committee recommends approval of the addition to the HCC 6-4 enacting a Water Use Reduction Staging Plan and setting a public hearing date for final approval.

The Water Use Reduction Staging Plan will standardize voluntary and mandatory conservation procedures such that they may be quickly implemented in the event of drought or emergency. The plan will minimize the risk that drought or other emergency would cause water supply interruption to any customer. A codified plan will formalize the city's reaction in a manner that is consistent and does not have to be relearned with any event.

Discussion

Commissioner Pouliot asked if this plan addresses those properties in the city that have a private well? City Attorney David Nielsen stated this plan would apply for city produced water and not well water. He would recommend that it apply only to city-produced water and the ordinance would be amended for second passage.

Mayor Smith asked if further clarification is necessary. City Attorney Nielsen again recommended the language be added to the ordinance for 2nd passage.

Commissioner Parriman noted at the March 20th administrative meeting a member of the HCC noted in case of Stage IV being implemented, all water use would be restricted and there would be an adverse effect on businesses in town, for example the car washes. Mr. Parriman asked if there is any way to make considerations for businesses.

Mayor Smith asked Mr. Rundquist to comment. Mr. Rundquist noted when the city reaches Stage IV; the city would not have the capacity to provide water for those types of businesses to continue operate. There will be hardships for everyone. Staff continues to recommend the implementation of the Water Use Reduction Staging Plan.

Commissioner Oitzinger clarified that Fire Chief Larson supported the ordinance. If the city reaches Stage IV, there will be concerns with being able to have enough water supply for fire protection and public safety.

Commissioner Netschert referred to the penalties section under Stage IV, and asked what happens when the occupant is not the owner? He recommended changing the wording from "not less than \$35.00" to "up to \$35.00" and "not less than \$70.00" to "up to \$70.00". This would help the landlord in case the tenant was not aware of the stage or didn't receive notice.

Public Works Director John Rundquist stated this subject created a lot of debate during the development of the ordinance. Mr. Rundquist noted when the notice is given; it is given to the occupant and not the landlord.

City Attorney David Nielsen stated this ordinance has been de-criminalized, violations will be civil offenses punishable by a civil penalty. With the first offense there will be a notice of the violation given. The reason for the minimum is it allows the city judge to set the penalties. It is a municipal

infraction. The city would still have to prove the occupant and the landlord were aware that Stage IV was in effect.

Commissioner Netschert stated he would like to allow for some latitude for landlords. He recommended changing the penalty language for the first infraction and leaving it as for the second and third infractions.

Mayor Smith noted that a public hearing will be set for April 8 and this will give the public an opportunity to speak.

Commissioner Parriman noted if Stage IV were in effect, could the city notify those businesses of the passage of this ordinance. City Manager Burton noted if the city were in Phase IV, it would be an emergency situation. He offered to have staff define the question and develop a recommendation.

Motion

Commissioner Netschert moved approval for first passage of an ordinance amending Helena City Code 6-4 to enact a Water Use Reduction Staging Plan and set a public hearing date of April 8, 2002. Commissioner Pouliot seconded the motion. All voted aye, motion carried. **Ordinance 2934**

Mayor Smith stated he does not see a trigger between Stage III and Stage IV and he asked staff to review the ordinance and include the specific trigger. Mayor Smith asked if carwashes are an indoor or outdoor use? He then recommended that staff look at the definition of the indoor/outdoor uses.

**Traffic Control
Recommendations**

CONSIDER TRAFFIC CONTROL RECOMMENDATIONS FOR VARIOUS CITY INTERSECTIONS.

Staff Report

City Engineer Chuck Hanson reported the Public Works Department has received a number of requests for traffic control revisions such as stop signs. Staff recommends changes at:

- 14 Street and Front Street
- Hannaford Street and Lyndale Avenue
- Madison Avenue and Hollins Street
- Tricia Street and Janet Street

The installation of stop signs or changes of traffic flow at an intersection can possibly cause more problems and create more liability for a city than before the change. In order to provide standard requirements for these traffic controls, the State and subsequently the cities, follow a set of guidelines called warrants to examine the circumstances for stop sign and other traffic control installations. The warrants are spelled out in a document called the Manual of Uniform Traffic Control Devices or the MUTCD. All requests need to be carefully considered under a deliberate study of the area and consideration of the application of the warrants.

Staff recommends approval for the following traffic control recommendations for the various city intersections:

Hannaford and Lyndale: Install a yield sign on the northbound approach of Hannaford onto Lyndale.

Madison and Hollins: Install yield signs on both Madison approaches to this intersection. Replace the existing yield sign with a stop sign at the intersection of Hollins and Benton.

14th and Front: Send to our consultant traffic engineer for assessment after full occupation of the new Federal building and courthouse. Install temporary curb bulbs on the west bound 14th Street approach. Relocate the stop sign for better

sight distance.

Tricia and Janet: Install a new stop sign on the Tricia approach to this intersection.

Discussion

Mayor Smith noted he believes the concerns of the neighborhood are being resolved with the recommendations of staff. Mr. Hanson noted the residents, many times, are great in reporting the traffic influx in the areas where traffic controls have been changed.

Commissioner Netschert noted approximately a year ago there was a request for a stop sign near University Street. He asked if staff anticipates any problems with this specific area? Mayor Smith noted that staff has been asked to report back on the traffic controls on University later this spring.

Motion

Commissioner Pouliot moved approval of the traffic control recommendations for the various city intersections outlined above.

Commissioner Parriman seconded the motion. All voted aye, motion carried.

PUBLIC HEARING

Raleigh Street

CONSIDER A RESOLUTION TO CLOSE AN UNDEVELOPED PORTION OF RALEIGH STREET BETWEEN BLOCKS 549 AND 566 OF THE EASTERLY ADDITION TO THE CITY OF HELENA, MONTANA.

Staff Report

City Engineer Chuck Hanson reported a number of residents in the area adjacent to the proposed closure are concerned with preserving this existing right-of-way. Their concern is primarily to keep the unconstructed street in a natural state for trails and stormwater control and to preserve landscaping improvements that already incorporate a portion of the right of way. The residents developed a petition and gathered enough funding to submit the petition and pay the filing fee.

The closure will ensure the continuance of the natural trail system and stormwater distribution. The closure, but not vacation, also retains the right-of-way for operation and maintenance of existing and future utilities.

Staff recommended approval of the resolution to close a portion of Raleigh Street between Blocks 549 and 566 of the Easterly Addition.

Discussion

City Manager Burton asked if the subject of the management of noxious weeds ever came up with the discussions with the neighbors? Mr. Hanson noted the subject had not been specifically discussed with the neighbors; however, they would be responsible for noxious weed management, the same as public boulevards.

Commissioner Netschert asked if this closure would impede any proposed subdivisions in the area? Mr. Hanson stated he does not believe this closure will impede any proposed development.

Commissioner Pouliot noted with this proposal, the city retains title to the property and could possibly reopen it in the future. If the city were to ever consider reopening it, the same public process would be used.

Mayor Smith asked Mr. Hanson to explain the difference between a closure and a vacation. Mr. Hanson explained with the closure process the city retains title to the property and it becomes undeveloped right of way. The neighbors enjoy the use of the property without going through the encroachment

process. The neighbors are aware that a future city commission could turn it back into public right of way.

The vacation of property is an actual transfer of title and an amended plat that shows the new lot configuration with the new property included if filed with the Clerk and Recorder. A fee is paid to the city based on the assessed value of the property.

City Attorney David Nielsen noted a closure does not allow adjacent property owners to construct improvements upon the closed property. The neighbors will have to maintain the property.

Commissioner Oitzinger noted that Bob Habeck submitted a letter recommending the resolution be amended to reflect the closure shall not affect the right of any individual to access the undeveloped portion of Raleigh Street.

Mr. Hanson noted it is the neighbor's intent is to use the closed property as a trail system. City Attorney David Nielsen noted the recommended amendment is not necessary because it is a closure and not a vacation. The city has the option on how the closure is used. He used the pedestrian mall as an example. The city could close the street and prohibit traffic.

Public Testimony

Mayor Smith declared the public portion of the hearing open and called for any persons wishing to address the commission.

Mr. Ed Casne, 733 3rd Street, noted all the adjacent property owners are represented. The topic of noxious weed control was discussed and the neighbors are aware that they are responsible for weed control; in fact Mrs. Janice Hollow currently keeps the weeds off the property. Mr. Casne stated the neighbors would like to make sure the street remains unconstructed in a natural state for stormwater control. He noted it is good to hear that if the city does decide to reopen the alley, then the neighbors would have the opportunity to speak on the issue.

Commissioner Pouliot asked if there is pedestrian traffic at this time. Mr. Casne noted people do use it for pedestrian traffic. Commissioner Netschert asked if there is any vehicular traffic. Mr. Casne stated there is no vehicular traffic at this time.

Commissioner Parriman asked if the neighbors plan on restricting pedestrian traffic. Mr. Casne stated there are no plans to restrict pedestrian traffic. Mayor Smith thanked Ms. Hollow for her work in controlling the noxious weeds.

There being no further persons wishing to address the commission, the public portion of the hearing was closed.

Discussion

Commissioner Netschert noted during the public hearing, concerns were expressed with future stormwater runoff and asked staff to address this concern.

Mr. Hanson explained the neighbors are concerned that there would be stormwater drainage problems if a road were constructed. Commissioner Netschert commented if the improvements were recommended, the concerns of the neighbors could be addressed at the time the development was submitted, prior to actual construction.

Commissioner Parriman asked what type of uses is restricted when a street is closed. City Attorney David Nielsen reported most of the time it is vehicular traffic that is prohibited. Mr. Nielsen noted it might be prudent to clarify that this closure would allow pedestrian traffic.

Mr. Nielsen recommended the following amendment:

Section 1. The Helena City Commission hereby closes the above-described undeveloped portion of Raleigh Street in the Easterly Addition in the City of Helena, Lewis and Clark County, Montana, **to motorized vehicular traffic** subject to the following condition:

City Manager Burton supported the proposed amendment.

Commissioner Parriman asked if the above amendment were approved, would it include motorcycles? City Attorney David Nielsen confirmed that motorcycles are considered motorized vehicles.

Commissioner Pouliot recommended the following amendment:

The Helena City Commission hereby closes, **to motorized vehicular traffic**, the above-described undeveloped portion of Raleigh Street in the Easterly Addition in the City of Helena, Lewis and Clark County, Montana, subject to the following condition:

Commissioner Netschert stated typically in the past, there is usually a need or hardship to close a street or alley. Mr. Netschert stated he does not see a real necessity to close this. The portion of Raleigh is located in the middle of a platted area. The stormwater issue will always be addressed in the conditions of any new development. He indicated that he would not support the resolution.

Motion

Commissioner Pouliot moved approval of a resolution to close to vehicular traffic a portion of Raleigh Street between blocks 549 and 566 of the Easterly Addition in the City of Helena, Montana. Commissioner Oitzinger seconded the motion.

Commissioner Oitzinger asked the neighbors if they concur with the recommendation. Mr. Casne indicated the residents support the amendment.

Vote

Motion carried 4-1 with Commissioner Netschert voting no. **Resolution 11742**

Public Communications

PUBLIC COMMUNICATIONS
There were no persons present.

Meetings of Interest

The next city commission meeting will be April 8, 2002. Commissioner Parriman noted the Helena Bighorns have a playoff game this coming Friday evening and encouraged his fellow commission members to attend.

Commissioner Netschert echoed Commissioner Parriman's comments to support the Helena Bighorns. The players have been very active in the community.

Adjournment

There being no further business to come before the commission, the meeting was adjourned at 7:45p.m. this 25th day of March, 2002.

MAYOR

ATTEST:

CLERK OF THE COMMISSION